

ASSEMBLY BILL

No. 120

Introduced by Assembly Member Hayashi

January 15, 2009

An act to amend Sections 2234, 2761, and 3541 of, and to add Section 686 to, the Business and Professions Code, and to amend Section 123462 of the Health and Safety Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 120, as introduced, Hayashi. Health care providers: reasonable disclosure: reproductive choices.

Existing law provides that every person has the right to choose or refuse birth control and that every woman has the right to choose to bear a child or to obtain an abortion. Existing law provides for the licensure and regulation of physicians and surgeons by the Medical Board of California, nurse practitioners by the Board of Registered Nursing, and physician assistants by the Physician Assistant Committee of the Medical Board of California. Existing law specifies conduct deemed unprofessional by physicians and surgeons, nurse practitioners, and physician assistants and provides for investigation and discipline of that conduct by the respective licensing boards.

This bill would make legislative findings and declarations regarding a patient's right to health care services and information. This bill would provide that a patient is entitled to receive, and a physician and surgeon, nurse practitioner, and physician assistant are obligated to disclose, all information, including all available medical choices, reasonably necessary for the patient to give informed consent with respect to personal reproductive decisions. This bill would provide that failure to

fulfill this duty constitutes unprofessional conduct, unless the licensee objects based on ethical, moral, or religious grounds, as specified.

Because this bill would specify additional requirements under the Medical Practice Act, and the Nursing Practice Act, the violation of which would be a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 686 is added to the Business and
2 Professions Code, to read:

3 686. The Legislature hereby finds and declares that a
4 professional or vocational license represents a privilege to practice
5 in California. While the state respects the right of an individual
6 licensee to refuse to perform health care services to which he or
7 she objects on ethical, moral, or religious grounds, there are limits
8 on these rights when they conflict with the superior right of patients
9 to access health care services. Accordingly, the Legislature finds
10 and declares that persons licensed under this division should not
11 abandon a patient or otherwise withhold health care service or
12 information from a patient without providing reasonable
13 accommodation of the patient's right to access health care services
14 and information. For purposes of this section, "reasonable
15 accommodation" shall have the same meaning as applied to that
16 term pursuant to subdivision (l) of Section 12940 of the
17 Government Code.

18 SEC. 2. Section 2234 of the Business and Professions Code is
19 amended to read:

20 2234. The Division of Medical Quality shall take action against
21 any licensee who is charged with unprofessional conduct. In
22 addition to other provisions of this article, unprofessional conduct
23 includes, but is not limited to, the following:

1 (a) Violating or attempting to violate, directly or indirectly,
2 assisting in or abetting the violation of, or conspiring to violate
3 any provision of this chapter.

4 (b) Gross negligence.

5 (c) Repeated negligent acts. To be repeated, there must be two
6 or more negligent acts or omissions. An initial negligent act or
7 omission followed by a separate and distinct departure from the
8 applicable standard of care shall constitute repeated negligent acts.

9 (1) An initial negligent diagnosis followed by an act or omission
10 medically appropriate for that negligent diagnosis of the patient
11 shall constitute a single negligent act.

12 (2) When the standard of care requires a change in the diagnosis,
13 act, or omission that constitutes the negligent act described in
14 paragraph (1), including, but not limited to, a reevaluation of the
15 diagnosis or a change in treatment, and the licensee's conduct
16 departs from the applicable standard of care, each departure
17 constitutes a separate and distinct breach of the standard of care.

18 (d) Incompetence.

19 (e) The commission of any act involving dishonesty or
20 corruption which is substantially related to the qualifications,
21 functions, or duties of a physician and surgeon.

22 (f) Any action or conduct which would have warranted the
23 denial of a certificate.

24 (g) The practice of medicine from this state into another state
25 or country without meeting the legal requirements of that state or
26 country for the practice of medicine. Section 2314 shall not apply
27 to this subdivision. This subdivision shall become operative upon
28 the implementation of the proposed registration program described
29 in Section 2052.5.

30 (h) *Failure to fulfill the duty of reasonable disclosure to a*
31 *patient pursuant to subdivision (e) of Section 123462 of the Health*
32 *and Safety Code.*

33 SEC. 3. Section 2761 of the Business and Professions Code is
34 amended to read:

35 2761. The board may take disciplinary action against a certified
36 or licensed nurse or deny an application for a certificate or license
37 for any of the following:

38 (a) Unprofessional conduct, which includes, but is not limited
39 to, the following:

1 (1) Incompetence, or gross negligence in carrying out usual
2 certified or licensed nursing functions.

3 (2) A conviction of practicing medicine without a license in
4 violation of Chapter 5 (commencing with Section 2000), in which
5 event the record of conviction shall be conclusive evidence thereof.

6 (3) The use of advertising relating to nursing which violates
7 Section 17500.

8 (4) Denial of licensure, revocation, suspension, restriction, or
9 any other disciplinary action against a health care professional
10 license or certificate by another state or territory of the United
11 States, by any other government agency, or by another California
12 health care professional licensing board. A certified copy of the
13 decision or judgment shall be conclusive evidence of that action.

14 (5) *Failure of a nurse practitioner to fulfill the duty of*
15 *reasonable disclosure to a patient pursuant to subdivision (e) of*
16 *Section 123462 of the Health and Safety Code.*

17 (b) Procuring his or her certificate or license by fraud,
18 misrepresentation, or mistake.

19 (c) Procuring, or aiding, or abetting, or attempting, or agreeing,
20 or offering to procure or assist at a criminal abortion.

21 (d) Violating or attempting to violate, directly or indirectly, or
22 assisting in or abetting the violating of, or conspiring to violate
23 any provision or term of this chapter or regulations adopted
24 pursuant to it.

25 (e) Making or giving any false statement or information in
26 connection with the application for issuance of a certificate or
27 license.

28 (f) Conviction of a felony or of any offense substantially related
29 to the qualifications, functions, and duties of a registered nurse,
30 in which event the record of the conviction shall be conclusive
31 evidence thereof.

32 (g) Impersonating any applicant or acting as proxy for an
33 applicant in any examination required under this chapter for the
34 issuance of a certificate or license.

35 (h) Impersonating another certified or licensed practitioner, or
36 permitting or allowing another person to use his or her certificate
37 or license for the purpose of nursing the sick or afflicted.

38 (i) Aiding or assisting, or agreeing to aid or assist any person
39 or persons, whether a licensed physician or not, in the performance

1 of, or arranging for, a violation of any of the provisions of Article
2 12 (commencing with Section 2220) of Chapter 5.

3 (j) Holding oneself out to the public or to any practitioner of
4 the healing arts as a “nurse practitioner” or as meeting the standards
5 established by the board for a nurse practitioner unless meeting
6 the standards established by the board pursuant to Article 8
7 (commencing with Section 2834) or holding oneself out to the
8 public as being certified by the board as a nurse anesthetist, nurse
9 midwife, clinical nurse specialist, or public health nurse unless the
10 person is at the time so certified by the board.

11 (k) Except for good cause, the knowing failure to protect patients
12 by failing to follow infection control guidelines of the board,
13 thereby risking transmission of blood-borne infectious diseases
14 from licensed or certified nurse to patient, from patient to patient,
15 and from patient to licensed or certified nurse. In administering
16 this subdivision, the board shall consider referencing the standards,
17 regulations, and guidelines of the State Department of *Public*
18 ~~Health Services~~ developed pursuant to Section 1250.11 of the
19 Health and Safety Code and the standards, guidelines, and
20 regulations pursuant to the California Occupational Safety and
21 Health Act of 1973 (Part 1 (commencing with Section 6300),
22 Division 5, Labor Code) for preventing the transmission of HIV,
23 hepatitis B, and other blood-borne pathogens in health care settings.
24 As necessary, the board shall consult with the Medical Board of
25 California, the Board of Podiatric Medicine, the Dental Board of
26 California, and the Board of Vocational Nursing and Psychiatric
27 Technicians, to encourage appropriate consistency in the
28 implementation of this subdivision.

29 The board shall seek to ensure that licentiates and others
30 regulated by the board are informed of the responsibility of
31 licentiates to minimize the risk of transmission of blood-borne
32 infectious diseases from health care provider to patient, from
33 patient to patient, and from patient to health care provider, and of
34 the most recent scientifically recognized safeguards for minimizing
35 the risks of transmission.

36 SEC. 4. Section 3541 of the Business and Professions Code is
37 amended to read:

38 3541. ~~It~~*The following* shall constitute unprofessional conduct
39 and a violation of this chapter for any person licensed under this
40 chapter to violate, attempt:

1 (a) *Violating, attempting to violate, directly or indirectly, or*
2 ~~assist assisting~~ *in or* ~~abet abetting~~ *the violation of, or* ~~conspire~~
3 *conspiring to violate any provision or term of this article, the*
4 *Moscone-Knox Professional Corporation Act, or any regulations*
5 *duly adopted under those laws.*

6 (b) *Failing to fulfill the duty of reasonable disclosure to a patient*
7 *pursuant to subdivision (e) of Section 123462 of the Health and*
8 *Safety Code.*

9 SEC. 5. Section 123462 of the Health and Safety Code is
10 amended to read:

11 123462. The Legislature finds and declares that every
12 individual possesses a fundamental right of privacy with respect
13 to personal reproductive decisions. Accordingly, it is the public
14 policy of the State of California that:

15 (a) Every individual has the fundamental right to choose or
16 refuse birth control.

17 (b) Every woman has the fundamental right to choose to bear
18 a child or to choose and to obtain an abortion, except as specifically
19 limited by this article.

20 (c) The state shall not deny or interfere with a woman's
21 fundamental right to choose to bear a child or to choose to obtain
22 an abortion, except as specifically permitted by this article.

23 (d) *Each person who seeks health care treatment, consultation,*
24 *or information pertaining to the person's personal reproductive*
25 *decisions from a physician and surgeon licensed pursuant to*
26 *Chapter 5 (commencing with Section 2000) of Division 2 of the*
27 *Business and Professions Code, a nurse practitioner licensed*
28 *pursuant to Article 8 (commencing with Section 2834) of Chapter*
29 *6 of Division 2 of the Business and Professions Code, or a*
30 *physician assistant licensed pursuant to Chapter 7.7 (commencing*
31 *with Section 3500) of Division 2 of the Business and Professions*
32 *Code shall be entitled to receive all information reasonably*
33 *necessary for the patient to give informed consent in determining*
34 *whether to submit to medical treatment, including disclosure of*
35 *all available medical choices.*

36 (e) *Each physician and surgeon, nurse practitioner, and*
37 *physician assistant described in subdivision (d) has an affirmative*
38 *duty of reasonable disclosure to his or her patient of all available*
39 *medical choices with respect to the patient's personal reproductive*
40 *decisions. Failure of a physician and surgeon, nurse practitioner,*

1 *or physician assistant to fulfill this duty shall constitute*
2 *unprofessional conduct, unless all of the following circumstances*
3 *exists:*

4 *(1) The licensee refuses on ethical, moral, or religious grounds*
5 *to provide disclosure pertaining to an available medical choice.*

6 *(2) The licensee has previously notified his or her employer, in*
7 *writing, of the medical choice or choices of which he or she objects*
8 *to disclosing, and the licensee's employer can, without creating*
9 *undue hardship, provide a reasonable accommodation of the*
10 *licensee's objection. For purposes of this section, "reasonable*
11 *accommodation" and "undue hardship" shall have the same*
12 *meaning as applied to those terms, respectively, pursuant to*
13 *subdivision (l) of Section 12940 of the Government Code.*

14 *(3) The licensee's employer shall have established protocols*
15 *that ensure that the patient has timely access to reasonable*
16 *disclosure of all medical choices pursuant to subdivision (d) despite*
17 *the licensee's refusal to disclose the specified medical choice.*

18 SEC. 6. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.